

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TOBA, INC.,

Plaintiff,

vs.

JOHN DOE, real name unknown;

Defendant.

**4:17CV3120**

**MEMORANDUM AND ORDER**

This matter is before the court on Plaintiff's Motion for Leave to Issue Subpoenas, (Filing No. 2). For the reasons set forth below the motion is granted.

Plaintiff's Complaint alleges a certain unknown individual – the John Doe named as defendant – is using Plaintiff's computer systems without prior authorization. Plaintiff has been able to ascertain an Internet Protocol ("IP") address associated with the unauthorized computer system use. Plaintiff is unable to identify the user solely by the IP address, but it believes the IP address was assigned by CenturyLink – an internet service provider in Nebraska and other places. Plaintiff now requests permission to serve subpoenas on CenturyLink in an attempt to identify the proper defendant in this case.

Fed. R. Civ. P. 26(d) provides that a party may not seek discovery until the meeting requirements of Rule 26(f) have been fulfilled unless the court orders otherwise. Courts have discretion to order expedited discovery where good cause is shown such as the case when the defendants have used technology or a third-party to hide their identities. See, e.g., Warner Bros. Records, Inc. v. Does 1-6, 527 F. Supp. 2d 1 (D.D.C. 2007)(allowing third party subpoenas to match IP address and identify the appropriate defendants); see also Arista Records, LLC

v. Does 1-30, case no. 4:08cv371, 2008 WL 2740326 (E.D. Ark. June 6, 2008)(same).

In this case, Plaintiff cannot proceed until it receives information identifying the Doe defendant. Expedited discovery is needed under such circumstances. Plaintiff may serve the requested third-party subpoena for the purpose of identifying the proper defendant in this action.

Accordingly,

Plaintiff's Motion for Leave to Issue Subpoenas, (Filing No. 2), is granted.

Dated this 15th day of September, 2017.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge